

REMARKS

Claims 38-40, 43, 45, 47, 51, 54, 63, 68, 77, 113-115, 118, 120, 122, 126, 129, 137, 142, and 151-153 constitute the pending claims in the present application. Applicants cancel, without prejudice, claims 39, 77, and 153. Applicants respectfully request reconsideration in view of the following remarks. Issues raised by the Examiner will be addressed below in the order they appear in the prior Office Action. Applicants thank the Examiner for courtesies extended during a telephonic interview conducted on August 27, 2004.

1. Applicants note that claims 38-40, 43, 45, 47, 51, 54, 63, 68, 77, 113-115, 118, 120, 122, 126, 129, 137, 142, and 151-153 are pending and under consideration.
2. Applicants note with appreciation the correction of Applicants' priority claim.
- 3-4. Claims 38, 39, 40, 43, 47, 63, 68, 113, 114, 115, 118, 122, 137, and 142 are rejected under 35 U.S.C. 102(b) as allegedly anticipated by Jacke et al. (US Patent No. 2950725). Applicants traverse this rejection and contend that the rejection is moot in light of the amended claims.

Applicants reiterate the arguments of record regarding the patentability of the claimed subject matter in light of Jacke et al. Nevertheless, to expedite prosecution, Applicants have amended the claims to more particularly point out certain embodiments of the claimed invention. Applicants' amendments are made solely to expedite prosecution and are not in acquiescence to the rejection. Applicants reserve the right to prosecute claims of similar or differing scope. Specifically, the amended claims more particularly point out that acoustic energy is being used to impart motion to a sample located in a fluid. Furthermore, the amended claims more particularly point out that the sample is a biological sample. Support for Applicants' amendments can be found throughout the specification, for example, on page 5, lines 25-29; page 8, lines 22-24; page 16, lines 5-7; page 16, lines 15-25; page 17, lines 7-20; and page 24, lines 15-23.

Jacke et al. neither teach nor suggest (i) the use of acoustic energy to mix biological samples or (ii) the use of acoustic energy to mix a sample located in a fluid. Given that Jacke et al. fail to teach or suggest each and every limitation of the claims, Jacke et al. fail to satisfy the

criteria for anticipating the claimed invention. In light of Applicants' amendments, reconsideration and withdrawal of this rejection are requested.

5-6. Claims 38-40, 43, 45, 47, 51, 54, 63, 68, 77, 113-115, 118, 120, 122, 126, 129, 137, 142, and 151-153 are rejected under 35 U.S.C. 102(e) as allegedly anticipated by, or alternatively under 35 U.S.C. 103(a) as allegedly obvious over Wohlstadter et al. (US Patent No. 6413783). Applicants traverse this rejection and contend that the rejection is moot in light of the amended claims.

Applicants reiterate the arguments of record regarding the patentability of the claimed subject matter in light of Wohlstadter et al. Specifically, Wohlstadter et al. neither teach nor suggest methods in which an acoustic energy source is selectively directed. Accordingly, Applicants maintain that Wohlstadter et al. fail to teach or suggest each and every limitation of the claims, and thus fail to anticipate or render obvious the claimed invention.

Nevertheless, to expedite prosecution, Applicants have amended the claims to more particularly point out certain embodiments of the claimed invention. Specifically, Applicants have amended the claims to point out that the acoustic energy source generates a focused acoustic field, and that the acoustic source generates a wavetrain substantially converging in a focal zone having particular characteristics. Support for Applicants' amendments can be found, for example, on page 14, lines 7-19. Applicants' amendments to the claims are made solely to expedite prosecution and are not in acquiescence to the rejection. Applicants reserve the right to prosecute claims of similar or differing scope. In light of Applicants' amendments, reconsideration and withdrawal of this rejection are respectfully requested.

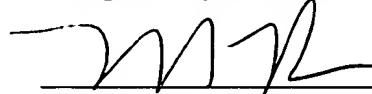
CONCLUSION

In view of the foregoing amendments and remarks, Applicants submit that the pending claims are in condition for allowance. Early and favorable reconsideration is respectfully solicited. The Examiner may address any questions raised by this submission to the undersigned at 617-951-7000. Should an extension of time be required, Applicants hereby petition for same and request that the extension fee and any other fee required for timely consideration of this submission be charged to **Deposit Account No. 18-1945, under Order No. CVRS-P02-001.**

Date: September 30, 2004

Customer No: 28120
Docketing Specialist
Ropes & Gray LLP
One International Place
Boston, MA 02110
Phone: 617-951-7000
Fax: 617-951-7050

Respectfully Submitted,



Melissa S. Rones
Reg. No. 54,408